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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 140131088-4088-01]

RIN 0648-BD94

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Fishing Effort Limits in Purse Seine Fisheries for 2014

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act) to revise the 2014 limit on fishing effort by U.S. purse seine vessels in the U.S. exclusive economic zone (U.S. EEZ) and on the high seas between the latitudes of 20° N. and 20° S. in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention). The total limit for 2014 would be revised from 2,588 fishing days to 1,828 fishing days. This action is necessary for the United States to implement provisions of a conservation and management measure (CMM) adopted by the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC) and to satisfy the obligations of the United States under the Convention, to which it is a Contracting Party.

DATES: Comments must be submitted in writing by [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2014-0081, and the regulatory impact review (RIR) prepared for this proposed rule, by either of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0081](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0081), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, might not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name and address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

An initial regulatory flexibility analysis (IRFA) prepared under authority of the Regulatory Flexibility Act is included in the Classification section of the SUPPLEMENTARY INFORMATION section of this proposed rule.

Copies of the RIR and the Supplemental Information Report prepared for National Environmental Policy Act (NEPA) purposes are available at [www.regulations.gov](http://www.regulations.gov) or may be obtained from Michael D. Tosatto, Regional Administrator, NMFS PIRO (see address above). FOR FURTHER INFORMATION CONTACT: Tom Graham, NMFS PIRO, 808-725-5032. SUPPLEMENTARY INFORMATION:

#### Background on the Convention

A map showing the boundaries of the area of application of the Convention (Convention Area), which comprises the majority of the western and central Pacific Ocean (WCPO), can be found on the WCPFC Web site at: [www.wcpfc.int/doc/convention-area-map](http://www.wcpfc.int/doc/convention-area-map). The Convention focuses on the conservation and management of highly migratory species (HMS) and the management of fisheries for HMS. The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of HMS in the WCPO. To accomplish this objective, the Convention established the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC). The WCPFC includes Members, Cooperating Non-members, and Participating Territories (hereafter, collectively “members”). The United States is a Member. American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI) are Participating Territories.

As a Contracting Party to the Convention and a Member of the WCPFC, the United States is obligated to implement the decisions of the WCPFC. The WCPFC Implementation Act (16 U.S.C. 6901 et seq.) authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as

may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the WCPFC. The WCPFC Implementation Act further provides that the Secretary of Commerce shall ensure consistency, to the extent practicable, of fishery management programs administered under the WCPFC Implementation Act and the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 et seq.), as well as other specific laws (see 16 U.S.C. 6905(b)). The Secretary of Commerce has delegated the authority to promulgate regulations under the WCPFC Implementation Act to NMFS.

#### WCPFC Decision on Tropical Tunas

At its Tenth Regular Session, in December 2013, the WCPFC adopted CMM 2013-01, “Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean.” CMM 2013-01 is the most recent in a series of CMMs for the management of tropical tuna stocks under the purview of the WCPFC. It is a successor to CMM 2012-01, adopted in December 2012. These and other CMMs are available at:

[www.wcpfc.int/conservation-and-management-measures](http://www.wcpfc.int/conservation-and-management-measures).

CMM 2013-01’s stated general objective is to ensure that the stocks of bigeye tuna (Thunnus obesus), yellowfin tuna (Thunnus albacares), and skipjack tuna (Katsuwonus pelamis) in the WCPO are, at a minimum, maintained at levels capable of producing their maximum sustainable yield as qualified by relevant environmental and economic factors. The CMM includes specific objectives for each of the three stocks: for each, the fishing mortality rate is to be reduced to or maintained at levels no greater than the fishing mortality rate associated with maximum sustainable yield.

CMM 2013-01 went into effect February 4, 2014, and is generally applicable for the 2014-2017 period. Some of its provisions apply to specific periods within the 2014-2017 period,

and some of its provisions are contingent on whether the WCPFC makes certain decisions in the future. The CMM includes provisions for purse seine vessels, longline vessels, and other types of vessels that fish for HMS. The CMM's provisions for purse seine vessels include limits on the allowable number of fishing vessels, limits on the allowable level of fishing effort, restrictions on the use of fish aggregating devices, requirements to retain all bigeye tuna, yellowfin tuna, and skipjack tuna except in specific circumstances, and requirements to carry vessel observers. This proposed rule is limited to implementing CMM 2013-01's provisions on allowable levels of fishing effort by purse seine vessels on the high seas and in the U.S. EEZ in the Convention Area, and only for 2014. The CMM's other provisions would be implemented through one or more separate rules, as appropriate.

#### Existing Purse Seine Fishing Effort Limit for 2014

Currently there is a limit on the amount of fishing effort that U.S. purse seine vessels may collectively spend between the latitudes of 20° N. and 20° S. on the high seas and in the U.S. EEZ in the Convention Area in 2014 (50 CFR 300.223(a)). The areas of high seas and U.S. EEZ between the latitudes of 20° N. and 20° S. in the Convention Area are referred to in the regulations as the Effort Limit Area for Purse Seine, or ELAPS, and the limit applies within the ELAPS as a whole. The limit in the ELAPS for 2014 is 2,588 fishing days, which is identical to the limit for 2013. The 2013 and 2014 limits were established in a final rule published May 23, 2013 (78 FR 30773; "2013 rule"), and are consistent with the CMM for tropical tunas that was in effect at that time, CMM 2012-01. CMM 2012-01 has a provision that was applicable to the high seas portion of the ELAPS and a separate provision that was applicable to the U.S. EEZ portion of the ELAPS. For reasons explained in the preamble to the proposed rule (78 FR 14755, published March 7, 2013) that preceded the May 23, 2013, final rule, NMFS established the

2013 and 2014 fishing effort limits (following the practice in previous rules for earlier years) so that a single limit applies in the entire ELAPS rather than separate limits for the two areas.

Limits on U.S. purse seine fishing effort in the ELAPS have been in place since 2009, when NMFS issued a final rule (74 FR 38544, published August 4, 2009; “2009 rule”) to establish the limits required under the then-in-effect CMM for tropical tunas, CMM 2008-01.

NMFS stated in the preamble to the March 7, 2013, proposed rule that if the WCPFC adopted a new CMM with purse seine provisions that differ from those in CMM 2012-01, NMFS would take any steps necessary to implement the WCPFC’s new decision. Because the allowable level of purse seine fishing effort on the high seas has changed under CMM 2013-01, this proposed rule would make the necessary changes to the 2014 purse seine fishing effort limit in the ELAPS.

#### Proposed Action

This proposed rule is limited to implementing the provisions in CMM 2013-01 for 2014 on allowable levels of fishing effort by purse seine vessels on the high seas and in the U.S. EEZ. The CMM’s fishing effort limit provisions for subsequent years would be implemented through one or more separate rules. NMFS is implementing the 2014 purse seine effort limits separately from other provisions of the CMM to ensure that the limits go into effect in U.S. regulations before the prescribed limits are exceeded by the fleet, which has a moderate likelihood of occurring before the end of 2014.

The purse seine fishing effort provisions of CMM 2013-01 apply only in the Convention Area between the latitudes of 20° N. and 20° S. The proposed action as described below would therefore be limited to that area.

With respect to the U.S. EEZ, CMM 2013-01 requires coastal members like the United

States to “establish effort limits, or equivalent catch limits for purse seine fisheries within their EEZs that reflect the geographical distributions of skipjack, yellowfin, and bigeye tunas, and are consistent with the objectives for those species.” CMM 2013 further requires, “Those coastal States that have already notified limits to the Commission shall restrict purse seine effort and/or catch within their EEZs in accordance with those limits.” The United States has regularly notified the WCPFC of its purse seine effort limits for the U.S. EEZ since the limits were first established in 2009 (in a final rule published August 4, 2009; 74 FR 38544). Accordingly, CMM 2013-01 does not change the applicable limit for the U.S. EEZ.

With respect to the high seas, CMM 2013-01 requires flag members to restrict the fishing effort of their purse seine vessels to specified levels, which for the United States is 1,270 fishing days per year.

This proposed rule would continue to implement the applicable limits for the U.S. EEZ and the high seas such that they apply to a single area, without regard to the boundary between the U.S. EEZ and the high seas; that is, to the ELAPS as a whole. As in the previous rules that established purse seine fishing effort limits in the ELAPS, NMFS has determined that combining the high seas and the U.S. EEZ limits would accomplish the objective of controlling the fishing mortality rates of the tuna stocks as required under the CMM, and, moreover, would provide greater operational flexibility to affected purse seine vessels and result in lesser adverse economic impacts than if separate limits were established in the two areas.

The existing purse seine fishing effort limit for the ELAPS was determined as follows: the U.S. EEZ portion of the ELAPS limit was 558 fishing days per year, and the high seas limit was 2,030 days per year, resulting in a combined limit of 2,588 fishing days per year, which is currently in place for 2014. CMM 2013-01 changes the high seas portion to 1,270 fishing days

per year, so the new combined limit is 1,828 days per year (558 + 1,270). Accordingly, this proposed rule would change the existing 2014 purse seine fishing effort limit for the ELAPS from 2,588 fishing days to 1,828 fishing days.

#### Classification

The Administrator, Pacific Islands Region, NMFS, has determined that this proposed rule is consistent with the WCPFC Implementation Act and other applicable laws, subject to further consideration after public comment.

#### Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

#### Regulatory Flexibility Act

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the SUMMARY section of the preamble and in other sections of this SUPPLEMENTARY INFORMATION section of the preamble. The analysis follows:

#### Estimated Number of Small Entities Affected

The proposed rule would apply to owners and operators of U.S. purse seine vessels used for fishing in the Convention Area. The number of affected vessels is the number licensed under the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America (South Pacific Tuna Treaty, or SPTT). The current number of licensed vessels is 40, which is the maximum number of licenses available under the SPTT (excluding joint-venture licenses, of which there are five available under the SPTT, none



of which have ever been applied for or issued).

On June 12, 2014, the Small Business Administration (SBA) issued an interim final rule revising the small business size standards, effective July 14, 2014 (79 FR 33647). The rule increased the size standard for Finfish Fishing to \$20.5 million. Based on (limited) available financial information about the affected fishing fleets and the SBA's definition of a small finfish harvester (i.e., gross annual receipts of less than \$20.5 million, independently owned and operated, and not dominant in its field of operation), and using individual vessels as proxies for individual businesses, NMFS believes that all the affected fish harvesting businesses are small entities. As indicated above, there are currently 40 purse seine vessels in the affected purse seine fishery. Neither gross receipts nor ex-vessel price information specific to the 40 vessels are available to NMFS, so average annual receipts for each of the 40 vessels during the last 3 years for which reasonably complete data are available, 2010-2012, were estimated as follows: The vessel's reported retained catches of each of skipjack tuna, yellowfin tuna, and bigeye tuna in each year was multiplied by an indicative Asia-Pacific regional cannery price for that species and year (developed by the Pacific Islands Forum Fisheries Agency and available at <https://www.ffa.int/node/425#attachments>). The products were summed across species for each year, and the sums were averaged across the 3 years. The estimated average annual receipts for each of the 40 vessels were less than \$20.5 million.

#### Recordkeeping, Reporting, and Other Compliance Requirements

The proposed rule would not establish any new reporting or recordkeeping requirements (within the meaning of the Paperwork Reduction Act). Affected vessel owners and operators would have to comply with all the proposed requirements, as described earlier in the SUPPLEMENTARY INFORMATION section of the preamble. Fulfillment of these

requirements is not expected to require any professional skills that the affected vessel owners and operators do not already possess. The costs of complying with the proposed requirements are described below to the extent possible:

If and when the purse seine fishery is closed to fishing in the ELAPS as a result of the annual fishing effort limit being reached in 2014, owners and operators of U.S. purse seine vessels would have to cease fishing in that area for the remainder of the calendar year. Closure of the fishery in the ELAPS could thereby cause foregone fishing opportunities and associated economic losses if the ELAPS contains preferred fishing grounds during such a closure. The likelihood of the fishery being closed in the ELAPS in 2014 under the proposed rule is greater than under the no-action alternative, because the proposed limit (1,828 days) is smaller than the existing limit (2,588 fishing days). Historical fishing patterns suggest a moderate likelihood of the fishery being closed before the end of 2014. The most recent 10 years for which estimates are available, but omitting 2010-2012, during which two important areas of high seas were closed to fishing, are used to determine the likelihood of the limit being reached. In order to make the data comparable among years, historical fishing effort, as well as the proposed ELAPS limit, are expressed here in terms of fishing days per year per active vessel, on average. Assuming 40 active vessels in 2014, the existing limit, 2,588 fishing days per year, is equivalent to 65 fishing days per year per vessel, on average (this level is termed the “existing threshold” in the following discussion, to distinguish it from the fleet-wide limit for 2014). The proposed limit, 1,828 fishing days, is equivalent to 46 fishing days per vessel per year, on average (“proposed threshold”). Among the 10 years 2001-2009 and 2013, fishing effort in the ELAPS ranged from 31 to 64 fishing days per vessel per year, exceeding the existing threshold in none of the 10 years and exceeding the proposed threshold in 4 of the 10 years, or 40 percent of the time. Based on this

history, the likelihood of the proposed limit being reached in 2014 is substantial—roughly 40 percent, whereas the existing limit is unlikely to be reached.

Other factors that could influence the likelihood of the proposed limit being reached are the status of vessels with respect to whether they have fishery endorsements and are allowed to fish in the U.S. EEZ, El Niño – Southern Oscillation (ENSO) conditions, and recent changes to SPTT-related arrangements. Regarding the first factor, if the proportion of the fleet that has fishery endorsements changes from the proportion during the baseline period, the likelihood of the ELAPS limit being reached would change accordingly (if the proportion increases, the likelihood would increase). However, because fishing in the U.S. EEZ makes up a relatively small portion of all fishing in the ELAPS, this is a relatively minor factor, and is not examined any further here. Regarding the second factor, the eastern areas of the WCPO have tended to be comparatively more attractive to the U.S. purse seine fleet during El Niño events (versus other times), when warm surface water spreads from the western Pacific to the eastern Pacific and large, valuable yellowfin tuna become more vulnerable to purse seine fishing. Consequently, the ELAPS, much of which is situated in the eastern range of the fleet’s fishing grounds, is likely to be more important fishing grounds to the fleet during El Niño events (as compared to neutral or La Niña events). According to the National Weather Service (see [http://www.cpc.ncep.noaa.gov/products/analysis\\_monitoring/enso\\_advisory/index.shtml](http://www.cpc.ncep.noaa.gov/products/analysis_monitoring/enso_advisory/index.shtml)), as of May 2014, conditions were ENSO-neutral and the forecast was that the chance of El Niño conditions will exceed 65 percent by the summer of 2014. To put this into perspective, the operational definition of El Niño as used by the National Weather Service is one such that El Niño events—which by definition last no fewer than five months and typically last less than 2 years—have occurred four times since 2001, and seven times since 1988. During this period, El

Niño conditions have prevailed during much less than half the time. Thus the more-than-65 percent chance of an El Niño developing in the summer of 2014 suggests a slightly higher likelihood (than indicated by historical fishing effort alone) of the proposed 2014 ELAPS limit being reached. Regarding the third factor, effective June 15, 2013, while certain SPTT instruments are being renegotiated, there is an interim arrangement in place between U.S. purse seine vessel owners and the members of the Pacific Islands Forum Fisheries Agency (FFA) that stipulates that the U.S. fleet may collectively spend no more than 12,000 fishing days in the EEZs of the Parties to the Nauru Agreement (PNA, a subset of eight FFA members in whose waters most WCPO tropical purse seine fishing occurs), and no more than 450 fishing days in the EEZs of the other FFA members during the period of the interim arrangement, which is 18.5 months). Assessing the likelihood of the FFA members' EEZs "limit" (in quotation marks because it is not a federal regulatory limit) being reached before the end of 2014 is difficult because the meaning of a fishing day under that arrangement is different than the meaning as used for the ELAPS limit, and NMFS does not have access to reliable measures of fishing days as used in the arrangement. The following discussion is based on fishing days as defined for the purpose of the ELAPS limit. The "limit" of 12,000 + 450 fishing days over 18.5 months means that there are 202 fishing days in the FFA members' EEZs available to each of the 40 expected U.S. vessels per 12 months, on average. Over the life of the SPTT through 2013, this level of 202 fishing days per vessel in the FFA members' EEZs was exceeded in only one calendar year, 2010, which saw 208 fishing days per vessel in the EEZs of the FFA members. The second highest level was in 2011, when there were 194 fishing days per vessel. 2010 and 2011 were two of the three years during which the two westernmost high seas pockets were closed to purse seine fishing, so they are probably not very indicative of likely fishing effort in 2014. Thus, it appears

that there is a relatively small likelihood of the EEZs of the FFA members becoming unavailable to the U.S. fleet before the end of 2014. Furthermore, it is possible that U.S. vessels will obtain access to additional 2014 fishing days in the EEZs of one or more FFA members, which would further lessen the likelihood of the FFA members' EEZs "limit" being reached.

In summary, based on the available information, there is a moderate likelihood of the proposed ELAPS limit being reached before the end of 2014 (about 40-percent likelihood based solely on historical patterns, and slightly greater taking into account forecasted ENSO conditions).

The costs associated with a closure of the ELAPS would depend greatly on the length of the closure. Given the moderate likelihood of a closure, its duration would likely be relatively brief. The costs of a closure would also depend greatly on whether the EEZs of other nations, particularly the typically most favored fishing grounds, the EEZs of the PNA, are still open to fishing. As indicated above, there is relatively small likelihood of the EEZs of the FFA members being unavailable for fishing before the end of 2014. Assuming they do remain available as fishing grounds, the impacts of a closure of the ELAPS would likely be minor. Nonetheless, the closure of any fishing grounds for any amount of time would be expected to bring impacts to affected entities (e.g., because the open area might, during the closed period, be less optimal than the closed area, and vessels might use more fuel and spend more time having to travel to open areas). If the ELAPS is a relatively preferred fishing ground during the closure (e.g., because of oceanic conditions or other factors), then the losses would be accordingly greater than if the ELAPS is not preferred relative to other fishing grounds. If the EEZs of the PNA and other FFA members are not available during an ELAPS closure, the costs of an ELAPS closure could be substantial. In the event the entire WCPO is closed to fishing during an ELAPS closure, possible

next-best opportunities include fishing outside the Convention Area in the eastern Pacific Ocean (EPO), and not fishing. The EPO tends to be fished very little by the fleet, indicating it contains less favorable fishing grounds (although, as indicated above, it tends to become more favorable during El Niño events). Furthermore, unless on the IATTC Vessel Register, which very few of the SPTT-licensed purse seine vessels currently are, an SPTT-licensed vessel is allowed to make only one fishing trip in the EPO each year, not to exceed 90 days in length, and there is an annual limit of 32 trips for the entire SPTT-licensed fleet (50 CFR 300.22(b)(1)). The alternative of not fishing at all during an ELAPS closure would mean a loss of any revenues from fishing.

However, many of the vessels' variable operating costs would be avoided in that case, and for some vessels the time might be used for productive activities like vessel and equipment maintenance. U.S. purse seine vessel operating costs are not known, so estimates of economic losses cannot be made. But information on revenues per day can give an indication of the magnitude of possible economic costs to affected entities. Average annual gross revenues for the 40 affected purse seine vessels during 2010-2012 were approximately \$11 million per vessel, on average. This equates to about \$30,000 per calendar day, on average.

The proposed 2014 ELAPS limit could affect the temporal distribution of fishing effort in the U.S. purse seine fishery. Since the limits would apply fleet-wide; that is, they would not be allocated to individual vessels, vessel operators might have an incentive to fish harder in the ELAPS earlier in a given year than they otherwise would. Such a "race-to-fish" effect might also be expected in the time period between when a closure of the fishery is announced and when it is actually closed, which would be at least seven calendar days. To the extent such temporal shifts occur, they could affect the seasonal timing of fish catches and deliveries to canneries, and conceivably affect prices. However, because most of the traditional fishing grounds are outside

the ELAPS, the intensity of any race-to-fish in the ELAPS is likely to be low if it occurs at all. The small likelihood of the EEZs of the FFA being closed to fishing before the end of 2014, as discussed above, might also influence the behavior of fishermen earlier in the year, but it is not clear how it would influence fishing in the ELAPS. If fishermen are more concerned about the FFA members' EEZs closing at some point, they might fish harder in those waters earlier in the year; if, on the other hand, they are more concerned about the ELAPS closing, they might fish harder in the ELAPS earlier in the year. In any case, the timing of cannery deliveries by the U.S. fleet alone (as it might be affected by a race to fish in the ELAPS) is unlikely to have an appreciable impact on prices, since many canneries buy from the fleets of multiple nations at any given time. A race to fish could bring costs to affected entities if it causes vessel operators to forego vessel maintenance in favor of fishing or to fish in weather or ocean conditions that they otherwise would not. This could bring costs in terms of the health and safety of the crew as well as the economic performance of the vessel.

In summary, there is a moderate likelihood of the limit being reached before the end of 2014, and if it is reached before the end of 2014, the impacts to affected entities could be minor or substantial, depending on such factors as the length of the closure, whether the EEZs of the FFA members remain available for fishing, and oceanic conditions.

There would be no disproportionate economic impacts between small and large entities operating vessels as a result of this proposed rule. Furthermore, there would be no disproportionate economic impacts based on vessel size, gear, or homeport.

#### Duplicating, Overlapping, and Conflicting Federal Regulations

NMFS has not identified any Federal regulations that duplicate, overlap with, or conflict with the proposed regulations.

## Alternatives to the Proposed Rule

In previous rulemakings to establish or revise U.S. purse seine fishing effort limits in the ELAPS in accordance with WCPFC decisions, NMFS considered a number of alternatives. The alternatives had to do, firstly, with the time scales for the limits (e.g., single-year versus multiple-year limits); secondly, with whether separate limits would be established in the U.S. EEZ and high seas portions of the ELAPS or they would be combined; thirdly, with whether the limit(s) would be allocated to individual vessels; and fourthly, with the magnitude of the limit(s).

The first category, time scales, is not relevant here because the objective is to implement the required fishing effort limit for 2014 only.

The second category, whether to break up the ELAPS limit into separate limits for the U.S. EEZ and the high seas portions of the ELAPS, would provide less operational flexibility for affected purse seine vessels, and thus be more constraining and costly than the proposed limit. It is not preferred for that reason.

The third category, allocating the limit among individual vessels, would likely alleviate any adverse impacts of a race-to-fish that might occur as a result of establishing the competitive fishing effort limits as in the proposed rule. As described in the previous paragraphs, those potential impacts include lower prices for landed product and risks to performance and safety stemming from fishing during sub-optimal times. Those impacts, however, are expected to be minor, so this alternative is not preferred.

Regarding the fourth category, the magnitude of the limits, NMFS could, as it did for the 2013 rule that established the 2013 and existing 2014 ELAPS limit, consider both smaller and larger limits for the ELAPS. Smaller limits, being more constraining and costly to affected fishing businesses, are not considered further here. CMM 2013-01 includes an explicit limit for



the United States for the high seas, 1,270 fishing days per year, so NMFS is not afforded any discretion there. Like its predecessor, CMM 2012-01, CMM 2013-01 is less explicit with respect to the U.S. EEZ, so NMFS could consider a more expansive limit for that aspect of the total ELAPS limit. For example, in the 2013 rule, NMFS considered an alternative that would be based in part on the fleet's greatest annual level of fishing effort in the U.S. EEZ (on an average per-vessel basis, then expanded to a 40-vessel-equivalent) during the 1997-2010 time period. Using that approach here, the U.S. EEZ aspect of the limit would be 1,655 fishing days, and when combined with the high seas aspect of 1,270 fishing days, the total ELAPS limit would be 2,925 fishing days. Because this alternative limit is greater and thus less constraining than the proposed limit of 1,828 fishing days (as well as the existing limit of 2,588 fishing days), the costs of complying with this alternative would be less than or equal to those of the proposed limit. This alternative is not preferred because it would depart from the effort limits established for the period 2009-2013. The approach used in formulating the limit proposed in this rule is consistent with the precedent set by the 2009 rule and the 2013 rule, and affected entities have been exposed to the impacts of those limits for the past five years.

The alternative of taking no action at all, which would leave the existing 2014 ELAPS limit of 2,588 fishing days in place, is not preferred because it would fail to accomplish the objective of the WCPFC Implementation Act or satisfy the international obligations of the United States as a Contracting Party to the Convention.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources,  
Reporting and recordkeeping requirements, Treaties.

Dated: July 21, 2014

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

**PART 300—INTERNATIONAL FISHERIES REGULATIONS**

1. The authority citation for 50 CFR part 300, subpart O, continues to read as follows:

Authority: 16 U.S.C. 6901 et seq.

2. In § 300.223, paragraph (a)(1) is revised to read as follows:

§ 300.223 Purse seine fishing restrictions.

\* \* \* \* \*

(a) \* \* \*

(1) For calendar year 2014 there is a limit of 1,828 fishing days.

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[FR Doc. 2014-17538 Filed 07/24/2014 at 8:45 am; Publication Date: 07/25/2014]